IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.28288 & 5744 of 2014
and
W.M.P.No.38791 of 2014

Amudha Sukumar ... Petitioner in both W.Ps.

Vs.

The Assistant Commissioner of Income Tax,
Business Circle I,
Room No.309, 3rd Floor,
121 MG Road, Nungambakkam,
Chennai - 600 034.
... Respondent in W.P.No.28288 of 2014

1.The Commissioner of Income Tax,
Chennai - I.
Income Tax Department,
121 MG Road, Aayakar Bhavan,
Nungambakkam, Chennai - 600 034.

2.The Deputy Commissioner of Income Tax,
Circle - I,
Income Tax Department,
121 MG Road, Aayakar Bhavan,
Nungambakkam, Chennai - 600 034.

3.The Assistant Commissioner of Income Tax,
Business Circle I,
Room No.390, 3rd Floor, Wanaparthy Block,
121 MG Road, Aayakar Bhavan,
Chennai - 600 034. ... Respondent in W.P.No.5744 of 2014

PRAYER in W.P.No.28288 of 2014:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent contained in the Assessment Order dated 28.08.2014 in PAN ADMPA6612R, and to quash the same, and consequently to forbear the respondent, or any of its agents, from taking any further action under Section 147 of the Income Tax Act, 1961 against the petitioner for the Assessment Year 2006-07.

PRAYER in W.P.No.5744 of 2014:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records quashing the impugned order issued by the third respondent in its proceedings vide PAN: ADMPA6621R/2006-07 dated 29.01.2014 dismissing the objections of the petitioner to the reopening of her income tax assessment for the assessment year 2006-07 under Section 147 of the Income Tax Act, 1961 and consequently forbearing the respondents or any of their subordinates, agents or any other person claiming under the respondents from reassessing the petitioner's income tax for the assessment year 2006-07 under the third respondent's notice issued on 05.11.2012 under Section 148 of the Income Tax Act, 1961.

For Petitioner : Mr.Sathish Parasaran
Senior Counsel for
(in both W.Ps) M/s.Suhrith Parthasarathy

For Respondents : M/s.Hema Muralikrishnan
(in both W.Ps) Senior Standing Counsel

C O M M O N O R D E R

By this common order, both these writ petitions are being disposed.

2.In W.P.No.5744 of 2014, the petitioner has challenged the impugned communication dated 29.04.2014 over ruling the objection of the petitioner against reopening of the Assessment completed under Section 143(3) of the Income Tax Act on 28.11.2008 for the Assessment year 2006-2007. The said writ petition was originally disposed of along with a batch of Writ Appeals by a decision of the Division Bench of this Court on 04.07.2014. Against the said order, the petitioner preferred an appeal before the Hon'ble Supreme Court.

3.At the time of admission, the Hon'ble Supreme Court passed an interim order dated 29.08.2014 which reads as under:

> In the meanwhile, the reassessment order shall not be framed by the Assessing Officer, if not framed so far.

4.The Hon'ble Supreme Court thereafter passed a final order pursuant to which this writ petition in W.P.No.5744 of 2014 is listed before this Court for final disposal.

5.The respondent however claim that on 28.08.2014 i.e., one day before the interim order was obtained by the petitioner from the Hon'ble Supreme Court on 29.08.2014, order had been passed. It is therefore submitted that the present writ petition was liable to be dismissed. Before proceedings with the merits of the case, I shall therefore first dispose W.P.No.28828 of 2014 wherein the petitioner has challenged the Assessment order dated 28.08.2014 passed by the respondent pursuant to impugned communication dated 28.01.2014 impugned in W.P.No.5744 of 2014.

6.On a reading of the order dated 28.08.2014, it is evident that the same has been backdated. The said order states that tax and interest are payable as per enclosed demand notice under Section 156. However on perusing the computation of tax in the said assessment order, the computation of tax is dated 01.09.2014. The notice of demand in Form 7 is dated 01.09.2014. Similarly, notice under Section 27 read with Section 271 of Income Tax Act is also dated 01.09.2014.

7.These indicate that the Assessment order dated 28.08.2014 impugned in W.P.No.28288 of 2014 has been backdated with a view to get over the interim order passed by the Hon'ble Supreme Court in Petitioner's S.L.P.No.22291 of 2014 dated 29.08.2014. Therefore the impugned order dated 28.08.2014 passed under Section 143(3) read with 147 of the Income Tax Act, 1961 impugned in W.P.No.28288 of 2014 is quashed. Accordingly, the aforesaid Writ Petition stands allowed.

7(a).I shall not proceed with the other two writ petitions.

8.The petitioner has challenged the impugned communication dated 29.01.2014 in W.P.No.5744 of 2014 seeking to re-open the completed Assessment for the Assessment Year 2006-07. The case of the petitioner before this Court is that the petitioner had filed a regular return under Section 139 of the Income Tax Act, 1961 on 28.02.2007 pursuant to which proceedings were initiated under Section 143(1) of the Income Tax Act, 1961 on 27.07.2007. Thereafter, a notice under Section 143(2) of the Income Tax Act, 1961 was issued to the petitioner. It is submitted that even at the time of filing of the returns on 28.02.2007, the petitioner had declared the sale of Agricultural land measuring 13.08 Acres at Egattur Village, Chengalpet Taluk on 15.10.2005 and claimed that the Capital Gain on sale of land was exempted since sale of Agricultural lands. Accordingly, no Agricultural Income was admitted during Assessment year 2006-07. It is further submitted that after the notice under Section 143(2) was issued to the petitioner on 09.01.2008 certain details were called for by the respondent when copies of the sale deed evidencing sale of the aforesaid land to M/s.Hiranandani Realtors Private Limited on 13.10.2005 was furnished to the department along with all the documents to substantiate that the land in question was a agricultural land of the income from the aforesaid land was accepted by the respondent during the Assessment years completed by the previous Assessment years as were.

9.It is further submitted that pursuant to a notice issued under Section 143(2) of the Income Tax Act by a communication dated 20.11.2008 it was specifically informed as follows:

> In continuation of the discussion had with you by my Auditor regarding the above Assessment and in reply to the details filed vide my letter dated 17.11.2008 I give below the further details called for by you.
>
> Note on Sale of Agricultural Land:
>
> 1.The Agricultural land at Egattur Village was purchased on 26.02.1979 and agricultural activities was done in the land. Every year I have been admitting the Agricultural Income in my IT Returns. Copy of this purchase deed enclosed for your reference.
>
> 2.This land was sold on 15.10.2005 for Rs.23,00,00,000 and the sale proceeds were deposited in the Bank. Copy of the Bank statement is enclosed.
>
> 3.Out of this amount I have used Rs.13,00,00,000 for investment in Mutual funds and I have gifted Rs.10,00,00,000 to my husband Mr.K.C.Sukumar (PAN No.AAOPS2896J). This is the source for all investments shown in your AIR.

10.It is therefore submitted that the reopening of the Assessment under Section 148 read with proviso to Section 147 of the Income Tax was without jurisdiction. It is submitted that there was no failure on the part of the petitioner to truly disclosure all the material facts that were required for the Assessment. Therefore, it is submitted that the respondent issued a notice on 05.11.2012 at the fag end of the limitation under Section 148 of the Income Tax Act. It is submitted that from a reading of the reasons given for reopening of the Assessment itself, makes it clear that there was a mere change of opinion and therefore there is no basis for reopening of assessment. In this connection, a reference was made to a communication dated 29.11.2012, of the respondent intimating the reasons for reopening the Assessment vide notice dated 05.11.2012, which reads as under:

> As requested by you, the reason for reopening the wealth tax assessment for the A.Y.2006-07 is furnished as under:
>
> ''The assessee has sold agricultural land of 13.08 acres at Rs.23,00,12,000/- to M/s.Hiranandani Realtors (P)Ltd, Mumbai. The land was sold for a non-agricultural purpose that is to a real estate company and the price at which it was sold outweighs the normally prevailing market rate for agricultural land.''

11.It is submitted that since the petitioner has a categorically taken a stand that the sale of the land was to a real estate developer and that the sale was declared as a sale of Agricultural land, question of reopening the Assessment under proviso to Section 147 cannot be countenanced. It is further submitted that in the impugned communication dated 29.01.2014, the respondent has obtained information from the Government of Tamilandu in G.O.Ms.No.287 dated 08.07.2004, wherein it is stated that the land in the said area was under was to be categorized as a urbanized land and that the land was fetching a good amount form a reality company shows that there was a suppression of fact by the petitioner. In this connection, the learned counsel for the petitioner submits that the reasonings in the impugned communication dated 29.01.2014 clearly shows no case was made out for reopening of the Assessment.

12.Defending the impugned order, the learned counsel for the respondent submits that the petitioner has already enclosed copy of the sale deed dated 15.10.2005 at the time of Assessment but had not filed any of the other documents such as patta, adangal and certificate regarding distance of land and population and therefore the petitioner made a false claim that during the original Assessment and had failed to furnish all the documents required for assessment.

13.It is therefore submitted that petitioner was liable to pay tax on the sale of land in question under as capital gains. It is further submitted that as per explanation 1 to Section 147, mere production on books of accounts other evidence from which the material evidence could with due diligence have been discovered by the Assessing Officer will not amount to disclosure within the meaning of Section 147 of the Income Tax Act, 1961.

14.Finally, the learned counsel for the respondent also placed reliance on the decision of this Court in Principal Commissioner of Income Tax Vs. Shri.A.Lalichan in T.C.A.No.504 of 2018 delivered on 11.10.2018.

15.He submits that the court has considered the decision of the Supreme Court in the case of Sarifabibi Mohmed Ibrahim & Others Vs. Commissioner of Income Tax 1993 (204) ITR 0631 and other decisions and held that the fact that the land is assessed to the Land Revenue as agricultural land under the State Revenue Law is certainly a relevant fact but it is not conclusive.

16.The learned counsel for the respondent further submitted that this Court in Sarojini Devi Vs. T.Sri Krishna [AIR 1944 Mad 401] it was held that the expression agricultural land should be given the widest meaning and if the land is assessed to the land revenue as agricultural land under the State Revenue Law, it is a strong piece of evidence of its character as an agricultural land, but on appeal, the Constitution Bench of the Hon'ble Supreme Court held that inasmuch as, the agricultural land is exempted from the purview of the definition of the expression ''assets'', it is ''impossible to adopt so wide a test as would obviously defeat the purpose of the exemption given''

17.He further submits that the Division Bench of this Court in T.C.A.No.504 of 2018 has also considered the decision of the Gujarat High Court in CIT Vs. Siddharth, wherein the Gujarat High Court has evolved the 13 test to determine the character of the land, which would could, whether the land in question Agricultural land or not for the purpose of Section 2 (14) of the Income Tax Act submits that the Division Bench has considered the same which reads as under:

> 1.Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue?
>
> 2.Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?
>
> 3.Whether such user of the land was for a long period or whether it was of a temporary character or by way of stopgap arrangement?
>
> 4.Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the ivnestment made in purchasing the land?
>
> 5.Whether, the permission under Section 65 of the Bombay land Revenue code was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?
>
> 6.Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use?Whether such cesser and/or alternative user was of a permanent or temporary nature?
>
> 7.Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?
>
> 8.Whether the land was situate in a developed area?Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as

would indicate that the land was agricultural?

9.Whether the land itself was developed by plotting and providing roads and other facilities?

10.Whether there were any previous sales of portions of the land for non-agricultural use?

11.Whether permission under Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist? If so, whether the sale or intended sale to such non-agriculturist was for non-agricultural or agricultural user?

12.Whether the land was sold on yardage or on acreage basis?

13.Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?

18.Under these circumstances, the learned counsel for the respondent submits that the impugned order communicating the reasons over ruling the objection of the petitioner against reopening of the Assessment vide communication dated 29.01.2014 cannot be interfered with and therefore prays for a dismissal of the writ petition.

19.I have considered the arguments advanced by the learned counsel for the petitioner and the respondent.

20.The only question to be determined in this case is whether there was a true and full disclosure of all material facts by the petitioner for the purpose of assessment under Section 147 of the Income Tax Act, 1961. As per Explanation 1 to Section 147 of the Income Tax Act, 1961, mere production on books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure to the meaning of proviso to Section 147 of the Income Tax Act. The fact that the petitioner had claimed exemption from payment of Tax as the land was sold to real estate company is not in dispute. The petitioner has enclosed copy of the sale deed which claim indicates sale was made to a real estate company namely M/s.Hiranandani Realtors Private Limited. The name of the buyer itself indicates its business. Therefore, it cannot be said that there was failure on the part of disclosure material evidence at the time of assessment.

21.The petitioner had also sent a representation in response to notice under Section 143(2) of the Income Tax Act indicating the sale to M/s.Hiranandani Realtors Private Limited. The fact that the petitioner may or may not have been enclosed the other documents such as patta, adangal and certificate of distance of land and population is not material. Particularly in the light of the fact that the respondent themselves had admitted that the petitioner had enclosed copy of the sale deed dated 15.102005 along with the letter dated 17.08.2008. There was an adequate declaration by the petitioner that the land in question was the agricultural land. Thus, it cannot be countenanced that there was a failure on the part of the disclosure of material evidence required for completing the Assessment.

22.The guidelines of the Hon'ble Gujarat High Court which has been extracted above though the relevant for determining whether the land in question was an Agricultural land or a Non-Agricultural land it has to be viewed from the prospectus of the petitioner. Then petitioner had taken a bonafide stand that the petitioner had sold an Agricultural land and therefore she was entitled to exclude the amount from payment of tax as capital gains. Further the reasons in the impugned order that in terms of G.O.Ms.No.287 issued by the Housing and Urban Development (UD 4 2) department dated 08.07.2004 that there was a draft Master Plan for the Mamallapuram Local Planning Area as consented to by the Government under Sub-Section (2) of Section 24 of the said Act, was returned to the Commissioner of Town and Country Planning, and he was requested to acknowledge the receipt of the same. The Commissioner of Town and Country Planning was requested to ensure that the various requirements specified in the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) and the Master Plan (Preparation, Publication and Sanction) Rules are strictly adhered to by the local planning authority, before the Master Plan was resubmitted to the Government for final approval under Section 28 of the said Act.

23.The fact that the petitioner had enclosed copy of the sale deed dated 15.10.2005 at the time of Assessment has not been denied. The property in question is not very far from City of Madras and therefore the respondent cannot state that the petitioner had not disclosed truly and fully of the material that are required for completing the assessment. If there is any doubt at the time of completion of Assessment under Section 143(3) of the Income Tax Act on 28.11.2008, the respondent could have called for further information for the petitioner. Considering the fact that the petitioner had enclosed copy of the sale deed of M/s.Hiranandani Realtors Private Limited and since the name indicates sale to the reality company, the respondent should have either rejected the case of the petitioner called for further information. Thus, there was no failure on the part of the petitioner to disclosure all material facts required for completing the assessment.

24.In the light of the above, I find no merits in the impugned communication dated 29.01.2014. In the result, W.P.No.5744 of 2014 also deserves to be allowed.

25.These writ petitions are thus allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner of Income Tax,
Business Circle I,
Room No.309, 3rd Floor,
121 MG Road, Nungambakkam,
Chennai - 600 034.

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Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate SR.No.16737

+2cc to M/s.Suhrith Parthasarathy, Advocate SR.No.16736

W.P.Nos.28288 & 5744 of 2014
and
W.M.P.No.38791 of 2014

EV(CO)
GMY(02/07/2021)